FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 8485 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Mr. S.S. Kulkarni for Petitioner.

Mr. U.K. Srivastava for Respondents.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 25, 2005

P.C.

. The Petitioners have partly succeeded in the suit filed by them. There is decree in their favour pursuant to which the respondents in satisfaction of the decree have deposited the sum of Rs.5,86,955/- in the trial court on 10.8.2004. The Petitioner was aggrieved and preferred an appeal. The respondents have not challenged the decree against them. The Petitioner thereafter moved the trial court for payment of the amount so deposited, in the proceedings for execution. The Petitioners thereafter prayed that the amount be paid to him. Respondents did not object, however, only stated that without prejudice to the rights of the Judgment Debtor, the amount deposited may kindly be

given to the decree holder. In spite of that the trial court while making the order dated 30.8.2004 proceeded on the footing that the matter is subjudice and therefore, rejected the said application. Considering the above, to my mind the order of the trial court amounts to failure to exercise jurisdiction. Once there was proceeding in execution in which the amount was deposited in terms of the decree and there was no stay by any higher court, the Executing Court was bound to pay the amount in the hands of the Petitioner herein in the facts and circumstances of the case. In the light of that rule made absolute in terms of Prayer Clause (b). On the amount being paid, the Executing Court is directed to record satisfaction in so far as payment of decretal amount is concerned.

. Rule made absolute accordingly. No order as to costs.

. The Executing Court to act on the copy of this order duly authenticated by the Associate of this court.

(F.I. REBELLO,J.)